

MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Friday, September 8 and Saturday, September 9, 2006 in Room 4401 at the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada 89101.

The following Board members were present for the roll call at 1:07 PM:

Stephanie Youngblood, DC, President
Margaret Colucci, DC, Vice President
Ian Yamane, DC, Secretary
Donald H. Miner, DC
Curtis Potts, DC, Member

Consumer Member David Howard was not present at the roll call. President Youngblood determined that a quorum of the Board was present and called the meeting to order. Also present were Deputy Attorneys General David Newton and Richard Dreitzer, Pasquale Laruito, DC, and his attorney John Hunt, attorney Liz Foley, and CPBN Executive Director Cindy Wade.

Dr. Yamane led the Pledge of Allegiance.

Agenda Item 1 Dr. Miner moved for approval of the agenda. Dr. Colucci seconded and the motion passed unanimously.

Agenda Item 2 There was no Public Comment.

Agenda Item 3 Dr. Colucci moved for approval of the July 14, 2006 and July 21, 2006 meeting minutes. Dr. Yamane seconded the motion and it passed unanimously..

Agenda Item 4 Dr. Miner moved to approve the Board financial reports. Dr. Youngblood seconded the motion and it passed unanimously.

CONSENT CALENDAR

Dr. Miner moved for approval of the items on the Consent Calendar, as follows:

Agenda Item 5 Approve granting of Doctor of Chiropractic licenses to applicants who passed the August 9, 2006 examination and whose applications are complete.

Agenda Item 6 Approve granting of Chiropractor's Assistant certificates to applicants who passed the August 11, 2006 examination and whose applications are complete.

Agenda Item 7 Approve granting of Chiropractor's Assistant for Massage to applicants who passed the August 11, 2006 examination and whose applications are complete.

Agenda Item 8 Approve Executive Director reports:

- A. Status of Complaints Received
- B. Status of Current Probations
- C. Legal/Investigatory:
 - 1. Costs assessed since last report
 - 2. Costs assessed year-to-date
 - 3. Costs collected since last report
 - 4. Costs collected year-to-date

Agenda Item 9 Approve request from Dr. Reza Ghassemi for termination of his probation.

Agenda Item 10 Approve application for DC licensure of Tikisa L. Primes.

Dr. Colucci seconded the motion and it passed unanimously.

ADMINISTRATIVE AGENDA

Agenda Item 11 This matter was postponed until 2:00 PM.

Agenda Item 25 This matter was taken out of order to accommodate attorney Liz Foley. She was interviewed as a prospective prosecuting attorney to assist with the backlog of pending complaints. A proposal from attorney ElizaBeth Beyer was considered. Dr. Miner moved that there be no action taken with respect to Ms. Beyer's proposal because she is not available for hearings on Saturdays. Dr. Youngblood seconded the motion and it passed unanimously.

Dr. Yamane moved to hire Ms. Foley to assist the Board with its caseload. Dr. Miner seconded and the motion passed unanimously. Ms. Foley agreed to work at the rate of \$150 per hour. Twelve cases will be sent to her for review and to prepare an estimate of time needed to bring them to closure.

Agenda Item 11 At 2:20 PM Dr. Miner explained that the matter of the CPBN's position with respect to chiropractors providing opinions regarding medical diagnosis, treatment and surgical care when performing IMEs was placed on the agenda because of numerous communications that have been received from one person, who is an osteopath. That person received advance notice of the date, time and location of this meeting but has failed to appear. Dr. Miner made a motion that the Board's prior decision that it is within the chiropractic scope of practice for chiropractors to provide opinions regarding medical diagnosis, treatment and surgical care when performing IMEs is correct, that the CPBN should continue to maintain this position, and that if the gentleman continues to pursue this issue it should be referred to the office of the Attorney General. Dr. Yamane seconded and the motion passed unanimously.

Agenda Item 12 This matter will be addressed at the next Board meeting as a settlement has not been reached in Case No. 06-6, Bryan Hansen, DC.

Agenda Item 13 The Board's Consumer Member David Howard still had not arrived at 2:30 PM. Because it appeared that he would not be attending the meeting, Dr. Yamane, who had recused himself due to a prior business dealing with the respondent, declared that he could impartially participate in the matter of Case No. 05-15 in the matter of Pasquale J. Laurito, DC. Dr. Laurito and Mr. Hunt approved Dr. Yamane's participation. The matter was postponed while the principals worked out the terms of a settlement.

Agenda Item 14 This matter will be addressed on Saturday, September 9, 2006.

Agenda Item 15 Dr. Miner explained that the representations presented to the Board at the June 17, 2006 hearing with regard to Dr. Peter Darvas's bankruptcy status have been reviewed by a bankruptcy expert attorney. His assessment is that some of the statements made were not accurate. Deputy Attorney General David Newton has contacted Darvas's attorney and requested backup documents with respect to the statements in question. This documentation will be presented to the Board at a future meeting for its decision. Dr. Miner moved to continue this matter pending further investigation, but that the Board's Order should be signed at this time although it may be reconsidered in the future. Dr. Yamane seconded and the motion passed unanimously.

Agenda Item 16A In Complaint 06-9 the attorney of two patients in a personal injury case claimed that they were over-treated. Dr. Yamane moved to dismiss the complaint because no statutory language exists as to the standard of care for treatment frequency. Dr. Miner seconded the motion and it passed unanimously.

Agenda Item 16B Complaint 06-12 was filed by a 62-year-old man who is disabled and on Medicare. When he was informed by the DC that Medicare would not pay for charges for use of a decompression table, he opted to apply for a credit card account, which was granted to him on the spot and \$2,200 was charged to that account in advance of treatment. Although the patient felt he had improved from the treatments, he provided documentation that he was charged for more treatments than he received.

Agenda Item 16B (cont'd) The matter was settled when the doctor and the patient signed an agreement in which the DC credited \$1,325.34 to the patient's account and the patient will pay the balance. Dr. Miner moved to dismiss the complaint Dr. Potts seconded and the motion passed unanimously.

Agenda Item 16C Dr. Miner explained that Complaint 16-13 seeks the Board's determination that Nevada chiropractors are not qualified to conduct IMEs or PPDs, and claims that by doing so they are practicing medicine. A similar complaint was filed previously and was dismissed. Dr. Miner moved that this complaint be dismissed because there is no violation of the chiropractic statutes or regulations. Dr. Yamane seconded and the motion passed unanimously.

Agenda Item 16D A 90-year-old lady filed Complaint 06-14 because she saw an "Error" message on the screen of a decompression apparatus and thought this meant the unit was faulty. She claims she called for the doctor for over 10 minutes to no response and has had back pain as a result. Her last treatment was a year ago and she has sought no medical care in the interim. The doctor wrote off the balance of her account because she was neither happy nor helped by the treatment. The complainant then withdrew her complaint. Dr. Miner made a motion for dismissal which was seconded by Dr. Youngblood and passed unanimously.

Agenda Item 16E Dr. Miner stated that Complaint 06-17 alleges unlicensed practice in Nevada by a chiropractor whose Nevada license was revoked. He does hold a license in an adjoining state. The Board has no jurisdiction over an unlicensed practitioner, therefore, Dr. Miner has turned the matter over to the authorities in the jurisdiction where he is allegedly practicing and they are pursuing the case. Dr. Miner moved to dismiss the complaint. Dr. Yamane seconded the motion and it passed unanimously.

Agenda Item 17 Drs. Miner and Yamane and Cindy Wade may attend the October 13-14, 2006 FCLB Regional Meeting in Salt Lake City and will confirm by September 21.

Agenda Item 18 Dr. Yamane will consult with the professional association with respect to their possible endorsement of a standard of care for treatment guidelines.

Agenda Item 19 Dr. Potts moved to approve the proposed revised Practice Self-Inspection form for 2007. Dr. Miner seconded and the motion passed unanimously.

Agenda Item 20 Dr. Potts reported that laser therapy stop smoking programs are taught in at least two chiropractic colleges and absolutely fall within the chiropractic scope of practice. Dr. Yamane moved that anyone offering this program must provide evidence to the Board that they have attended a minimum 12-hour educational course. Dr. Potts seconded and the motion passed unanimously.

Agenda Item 13 Deputy AG Richard Dreitzer announced that the respondent and investigating Board member have reached agreement on a proposed Agreed Settlement of Disciplinary Action in the Matter of Pasquale Laurito, DC.

Agenda Item 13 (cont'd) The terms of the proposed settlement were reviewed and amended. Dr. Miner moved to approve the proposed Agreed Settlement as amended. Dr. Potts seconded the motion. The motion passed with Drs. Youngblood, Yamane, Miner and Potts in favor. Dr. Colucci recused because she was the investigating Board member.

Agenda Item 26 The matter of approval of a prospective compliance monitor was next addressed to accommodate the presence of Dr. Jeff Andrews. The Board conducted an interview with Dr. Andrews. Dr. Potts moved to approve Dr. Andrews as a compliance monitor. Dr. Yamane seconded the motion and it passed unanimously.

Agenda Item 21 The propriety of the use of encrypted patient notes has come into question. The Board reviewed some redacted encrypted notes for which an attorney had to subpoena and pay \$300 for the DC's dictated notes. The Board determined that encrypted patient notes do not meet the standard of care under the regulations for record keeping. Dr. Yamane moved that Cindy Wade should correspond with the attorney to let her know that the encrypted notes she submitted are substandard, that she should not have had to pay to have them translated, and if she wishes to let us know the name of the DC involved Dr. Yamane will file a complaint. Dr. Miner seconded and the motion passed unanimously.

Agenda Item 22 It was agreed to table the matter of the Board's position with respect to certification of massage therapists until the next meeting when a member of their board can be present.

The meeting recessed at 5:35 PM and resumed at 9:11 AM on Saturday, September 9, 2006.

The following Board members were present at the roll call:

Stephanie Youngblood, DC, President
Margaret Colucci, DC, Vice President
Ian Yamane, DC, Secretary
Donald H. Miner, DC
Curtis Potts, DC, Member

Also present were Deputy Attorneys General David Newton and Richard Dreitzer and CPBN Executive Director Cindy Wade.

Agenda Item 23 Following discussion, Dr. Miner moved to adopt the following parameters for future compliance monitoring:

- Physical inspections of the practice to be performed at least quarterly;
- During visits, issues directly related to the violations detailed in the Board's Order will be addressed
- During visits, random review of patient notes, SOAP notes, new patient records, x-rays, etc., will be performed

- During visits, random review of registration with Board of staff and independent contractors will be performed
- During visits, random review of advertising and contracting records will be performed
- Written reports will be submitted to the Board quarterly
- Compliance monitors will be assigned by the Board
- Compliance monitors must be a chiropractor with a current active or inactive Nevada license
- Reports will be submitted to the Board in writing within 10 days of physical inspections

Dr. Yamane seconded the motion and it passed unanimously.

Dr. Miner moved that arrangements must be made for the licensee to pay the compliance monitor's fee to the Board and the Board will reimburse the compliance monitor. Dr. Youngblood seconded the motion and it passed unanimously.

The Board agreed to address the concerns with one of the current compliance monitors at a videoconference meeting on October 2, 2006 at 1:00 PM. Cindy will notify the compliance monitor.

Agenda Item 24 Proposed verbiage for a Board policy to establish criteria for settlement agreements/Board orders involving probation was reviewed and amended. Dr. Miner moved for approval of the proposed criteria as amended. Dr. Yamane seconded and the motion passed unanimously.

Agenda Item 14 At 10:15 AM it was noted for the record that Mark Rubin, DC, and/or his attorney were not present. Deputy AG David Newton informed the Board that he had established with Dr. Rubin's attorney that she agreed to waive the 30 day notice requirement and that she would appear on Dr. Rubin's behalf today at 9:00 AM. She had informed him that there is no real progress with Dr. Rubin's negotiations with New York for paperwork that will clear up the status of his child support default.

Dr. Rubin's license is currently suspended until he provides the required paperwork, takes the Law test and pays the balance of monies owed for the fine and Board's costs that were imposed. Mr. Newton was requested to address with Rubin's attorney the advertising that appears on Dr. Rubin's vehicle and to request that he send his license and renewal certificate to the Board which are to be held while his license is suspended. Dr. Miner moved that Cindy be instructed to deposit the \$3,250 in money orders that have been held as partial payment from Dr. Rubin. Dr. Youngblood seconded and the motion passed unanimously. Mr. Dreitzer advised that the Board may assess all documented Board costs incurred since the date of the Agreed Settlement, except for the costs of Dr. Rubin's appeal of his suspension. The costs may be reduced to judgment and a lien may be filed against Dr. Rubin's assets.

Agenda Item 27 Under Committee Reports, Test Committee Chair Dr. Colucci established that the next CA examinations will be administered on February 2, 2007.

Agenda Item 27 (cont'd) Legislative Chair Dr. Miner reported that there is nothing outstanding to report at this time with regard to Legislative issues. Mr. Newton informed the Board that his office will track bills for the CPBN if desired.

Agenda Item 28 Under the Correspondence Report, Cindy was instructed to respond to an inquiry that licensed DCs may practice cold laser therapy for pain management.

The issue with respect to licensees who only work with one attorney and refer to another clinic anyone who has retained other legal counsel will be placed on the next meeting agenda.

Dr. Yamane will respond to a letter from a company that wishes to advertise and provide brochures in DC offices and pay the DC for his staff's time in completing the online applications. He will include a warning that an appropriate release must be obtained from the patient and all patient protection and authorizations are to be included in the transaction.

Drs. Youngblood, Colucci and Yamane may be interested in participating in the NBCE Part IV exam in November, 2006. They will advise Cindy by September 29.

Agenda Item 29 Under Board Member Comments Dr. Miner stressed that investigating Board members should make every attempt to deal with the licensee under investigation to attain a settlement agreement if there is a violation. However, if the licensee engages an attorney, the matter must be turned over to the Board's attorney to conduct the negotiations. Settlement agreement protocols were reviewed.

Agenda Item 30 There was no public comment.

The meeting adjourned at 11:25 AM.

Approved: November 3, 2006

Ian K. Yamane, DC, Secretary